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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 MUHAMMAD HAFEEZ,

12 Petitioner,

13 vs.

14 MICHAEL CHERTOFF, SECRETARY OF
15 THE DEPARTMENT OF HOMELAND
SECURITY; et al.,

Respondents.

CASE NO. 08cv2015 WQH (NLS)

ORDER

16 HAYES, Judge:

17 The matters before the Court are Petitioner Muhammad Hafeez's Petition for Writ of
18 Habeas Corpus, pursuant to 28 U.S.C. § 2241 (Doc. # 1), and the Motion for Appointment of
19 Counsel (Doc. # 3).

20 **Background**

21 The Petition for Writ of Habeas Corpus ("Petition") alleges that Petitioner is a citizen
22 of Pakistan. The Petition alleges that Petitioner is in the custody of the Immigration and
23 Customs Enforcement, and that he has been ordered removed under 8 U.S.C. § 1227 for a
24 felony conviction. The Petition alleges that Petitioner's continued and indefinite detention
25 pursuant to 8 U.S.C. § 1231 is unlawful because Petitioner has been detained beyond the
26 presumptively reasonable period of six months and there is no significant likelihood of his
27 removal in the reasonably foreseeable future. *See Zadvydas v. Davis*, 533 U.S. 678 (2001).
28

Order to Show Cause

Having reviewed Petitioner's claims, the Court finds that summary dismissal of the Petition is unwarranted at this time. *See Kourteva v. INS*, 151 F. Supp. 2d 1126, 1128 (N.D. Cal. 2001) ("Summary dismissal is appropriate only where the allegations in the petition are vague or conclusory, palpably incredible, or patently frivolous or false."). Accordingly, Respondents are **ORDERED TO SHOW CAUSE** why the Petition should not be granted by:

- (1) filing a written return no later than **Monday, December 15, 2008**;
- (2) filing copies of all documents, orders and transcripts relevant to the Petition; and
- (3) filing a memorandum of law and fact fully stating Respondents' position and making a recommendation regarding the need for an evidentiary hearing on the Petition.

If Petitioner wishes to reply to the return, he may do so by way of a traverse filed no later than **Monday, January 19, 2009**.

Motion to Appoint Counsel

18 U.S.C. § 3006A(a)(2)(B) provides that "[w]henver the United States magistrate or the court determines that the interests of justice so require, representation may be provided for any financially eligible person who . . . (B) is seeking relief under section 2241" "The purpose of section 3006A is to provide for appointed counsel whenever required if failure to do so amounts to a denial of due process." *Gray v. Kernan*, No. C-92-3379-DLJ, 1993 U.S. Dist. LEXIS 2113, *10-12 (N.D. Cal. Feb. 16, 1993); *citing Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th Cir. 1986). Unless an evidentiary hearing is required, appointment of counsel pursuant to 18 U.S.C. § 3006A(a)(2)(B) is in the discretion of the district court. *Terrovona v. Kincheloe*, 912 F.2d 1176, 1181-82 (9th Cir. 1990). In deciding whether to appoint counsel, the district court "must evaluate the likelihood of success on the merits as well as the ability of the petitioner to articulate his claims *pro se* in light of the complexity of the legal issues involved." *Gutierrez v. Flannican*, No. CIV 05-2981 PHX DGC (DKD), 2005 U.S. Dist. LEXIS 31984, *1-2 (D. Ariz. Dec. 7, 2005); *citing Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir. 1983).

